STATE OF CONNECTICUT

DOCKET NO. CV-19-5059848-S

KRISTEN A. FESTA, ET AL. SUPERIOR COURT

JUDICIAL DISTRICT
OF HARTFORD

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH SEPTEMBER 27, 2019

MEMORANDUM OF DECISION: MOTION TO DISMISS

The plaintiffs, Kristen A. Festa and Brian D. Festa, PPA Andrew Festa, bring this action for a declaratory judgment and an injunction, against the defendant, State of Connecticut Department of Public Health (DPH or defendant). Specifically, the plaintiffs are seeking a declaration that DPH violated Regs. Conn. State Agencies § 10-204a-4 (c)'s confidentiality provision when it released school specific information to the public, in addition to an order both requiring the defendant to remove immunization data already published on the defendant's public website or in other publically available publications, and enjoining the defendant from releasing any additional school specific immunization data in the future. The defendant has moved to dismiss the action on the ground that the court lacks subject matter jurisdiction because (1) the plaintiffs failed to exhaust their administrative remedies; (2) sovereign immunity bars the action; and (3) the plaintiffs lack standing to bring this claim. The plaintiffs have objected to the defendant's motion to dismiss.

The court heard argument on the motion to dismiss and objection on September 9, 2019. During argument, the parties agreed that, in addition to the pleadings, the court could look to any of the documents attached to the pleadings, motion, or objections when

considering the defendant's motion.[1] Having reviewed the pleadings, briefs, documents, and arguments of the parties, the court finds that the plaintiffs have failed to exhaust their administrative remedies and, therefore, the court lacks subject matter jurisdiction over this action. Because the court agrees with the defendant as to its first jurisdictional claim, it is unnecessary for the court to consider the remaining two jurisdictional issues.

The following allegations,[2] facts, and procedural history, are relevant to the court's resolution of the motion to dismiss. The plaintiffs are Brian D. Festa, next friend for the minor plaintiff Andrew Festa,[3] and Kirsten A. Festa, Andrew's mother. Brian Festa is

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[1] At the hearing, the court denied the plaintiffs' motion for an evidentiary hearing on the motion to dismiss because the plaintiffs failed to provide a sufficient offer of proof as to the necessity for any additional evidence, and the matters raised by the plaintiffs in the offer were not relevant to the court's decision on the motion to dismiss.

[2] The allegations and facts that support the court's findings are found in the plaintiffs' two applications for injunctive relief, the motion for declaratory judgment, and the attachments to the parties' pleadings and motions, which the parties agreed should be considered by the court. The allegations are construed in the light most favorable to the plaintiffs. See *Board of Education* v. *Bridgeport*, 191 Conn. App. 360, 367, __ A.3d __ (2019) ("When a . . . court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . . Further, in addition to admitting all facts well pleaded, the motion to dismiss invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts." [Internal quotation marks omitted.]).

[3] Although one of the plaintiffs is a minor, and the case is premised on the improper release of allegedly confidential information pertaining to the minor child and his family, the plaintiffs did not seek an order to proceed by pseudonyms. See Practice Book § 11-20A (h) (1). For this reason the court is using the plaintiffs' names. At argument, the plaintiffs indicated that they attempted to proceed by pseudonyms, but were discouraged from doing so by an unidentified clerk. Section 11-20A (h) (1) provides in relevant part that "[p]seudonyms may be used in place of the party or parties only with the prior approval of the judicial authority and only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in knowing the name of the party or parties." See *Vargas* v. *Doe*, 96 Conn. App. 399, 411, 900 A.2d 525, cert. denied, 280 Conn. 923, 908 A.2d 546 (2006) ("The most compelling situations [for granting a motion to proceed anonymously] involve matters which are highly sensitive, such as social stigmatization, real danger of physical harm, or where the injury litigated against would occur as a result of the disclosure of the [party's] identity. . . . There must be a strong social interest in concealing the identity of the [party]." [Internal quotation marks omitted.]).

Andrew's father and an attorney. The plaintiffs originally filed this action as self-represented parties, but later retained counsel, who has appeared in this action.[4] Andrew is seven years old and has been diagnosed with autism spectrum disorder (ASD). He is a student the Meliora Academy, a nonpublic school in Meriden, which provides educational services to students with ASD and other disorders. Andrew's parents have utilized a religious exception from the state's mandatory immunization requirements. See General Statutes § 10-204a.

By law, the commissioner of DPH is charged with employing "the most efficient and practical means for the prevention and suppression of disease . . . ." General Statutes § 19a-2a. The defendant's powers and duties include to, "with the health authorities of this and other states, secure information and data concerning the prevention and control of epidemics and conditions affecting or endangering the public health, and compile such information and statistics and shall disseminate among health authorities and the people of the state such information as may be of value to them." General Statutes § 19a-2a (8).

Pursuant to this authority, every year the defendant distributes an immunization survey to all Connecticut schools, licensed group day care homes, and child care centers. On the survey, the schools and day care centers report the total number of students or attendees who completed the required vaccine series, the number who failed to complete the required vaccine series, and the number of children who claimed exemptions for religious or medical reasons.

On May 3, 2019, the defendant published immunization data, on its website, pertaining to children in kindergarten through twelfth grade. That information included the total percentage of students in the state who had received all required immunizations and those that

[4] Originally, the entity Informed Choice Connecticut, Inc. (Informed Choice CT) was listed as a plaintiff, but it was removed because it was not represented by counsel, and could not, therefore, proceed in a self-represented capacity. See *Triton Associates* v. *Six New Corp.*, 14 Conn. App. 172, 175, 540 A.2d 95, cert. denied, 208 Conn. 806, 545 A.2d 1104 (1988) ("In Connecticut, a corporation may not appear pro se" [internal quotation marks omitted]).

asserted exemptions, as well as the percentage of students at individual schools that asserted exemptions. The released data did not contain any personally identifying information about any student or their family.

On May 3 and May 4, 2019, The Connecticut Mirror and The Hartford Courant published articles on the immunization data released by the defendant. The Connecticut Mirror referred to the percentages of unvaccinated children as "startling." The Hartford Courant's article identified the ten schools whose students claimed the most exceptions. The Meliora Academy was one of the ten schools identified, with 18.5 percent of its students claiming medical or religious exemptions to vaccinations. After the publication of the immunization data, members of the public voiced their opinions about the data, which the plaintiffs refer to as "hateful and vitriolic" and harassing. None of these statements of opinion were directed at the plaintiffs specifically, and the plaintiffs did not receive any direct threats until after they filed this lawsuit in their own names.

On May 3, 2019, the same day the defendant published the student immunization data, LeeAnn Ducat, the Founder of Informed Choice CT, wrote to the commissioner of DPH, Renee D. Coleman-Mitchell (Informed Choice Letter). The Informed Choice Letter asked the commissioner to reconsider her decision to disclose immunization data by school because such an action was discriminatory, violated the defendant's confidentiality regulations, and constituted a possible HIPPA violation. On the day Informed Choice CT wrote the letter, Kirsten and Brian Festa were members of the organization and Brian Festa was a member of

the Board.[5] Brian Festa later resigned from the board in June of 2019. The plaintiffs remain members of Informed Choice CT.

The Informed Choice Letter was written on Informed Choice CT letterhead and was only signed by Ducat, as "Founder" of the organization. The letter does not specifically ask for any declaratory relief or cite General Statutes § 4-176 or the defendant's corresponding regulations pertaining to the declaratory judgment requests it receives. No one was copied on the letter. The letter expresses generalized concerns about the legality of the defendant's release of the school specific immunization data on behalf of the organization. Except for one anonymous antidote, the letter does not contain any specific information or concerns about any specific person, member, or school, and nowhere states that the letter was sent to protect the rights of any individuals, including the plaintiffs. The letter does not mention the plaintiffs or the Meliora Academy, nor provide any specific information about how the defendant's decision impacts the plaintiffs. To the extent this letter could be considered sufficient to constitute a request for declaratory relief, the plaintiffs did not seek to intervene in the proceeding.

On May 10, 2019, the commissioner responded to the Informed Choice Letter, disagreeing that the release of the school specific immunization data was illegal, discriminatory, or constituted a violation of HIPPA, and explaining the reasons for her decision to release the data. The commissioner's response was not directed at any particular student or school and was mailed to LeeAnn Ducat, as Founder of Informed Choice CT only.

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[5] At oral argument, the plaintiffs argued that Brian Festa assisted in drafting the May 3, 2019 Informed Choice Letter. Although the plaintiffs argued that Mr. Festa's drafting of the letter supports their view that the plaintiffs exhausted their administrative remedies, as discussed infra, the letter nowhere mentions the plaintiffs or their particular circumstances and his involvement in the drafting of the letter does not make him a party to it.

The plaintiffs initiated this action on or about May 31, 2019. The plaintiffs claim that the defendant's publication of the school specific immunization data (1) violated the confidentiality provision of Regs. Conn. State Agencies § 10-204a-4 (c); (2) violated the plaintiffs' equal protection rights guaranteed by the state and federal constitutions; and (3) caused the plaintiffs mental and emotional distress. The plaintiffs seek injunctive and declaratory relief: (1) declaring that the defendant has violated the state regulation; (2) ordering the defendant to remove the confidential school specific immunization information from the public website and any other publically available sources; and (3) enjoining the defendant from releasing any further immunization information.

On May 31, 2019, the court denied the plaintiffs' application for an ex parte injunction, and the matter was set down for a hearing on July 15, 2019. On July 11, 2019, the defendant moved to dismiss the action, on the ground that the court lacked subject matter jurisdiction, and opposed the plaintiffs' application for injunctive relief.

At the July 15, 2019 hearing, the court raised the issue that it could not proceed with a hearing on the application for temporary relief because the issue of the court's subject matter jurisdiction had been raised. See *Waterbury* v. *Washington*, 260 Conn. 506, 527, 800 A.2d 1102 (2002) ("Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . The objection of want of [subject matter] jurisdiction may be made at any time . . . and the court or tribunal may act on its own motion, and should do so when the lack of jurisdiction is called to its attention. . . . The requirement of subject matter jurisdiction cannot be waived by any party and can be raised at any stage in the proceedings. . . . If at any point, it becomes apparent to the court that such jurisdiction is lacking, the appeal must be dismissed." [Internal quotation marks omitted.]).

Plaintiffs' counsel, who had just appeared in the case, indicated that she wished to file a written opposition to the defendant's motion to dismiss. The court set a briefing schedule and scheduled argument on the motion to dismiss for September 9, 2019.

Since the original filings in this case in May 2019, the plaintiffs filed a second application for temporary injunctive relief, after the Governor announced that the state would be releasing immunization data for the 2019-2020 school year. At a status conference held on August 29, 2019, the defendant explained that only the statewide data would be imminently released and that the school by school data would not be released until sometime in October 2019. Because the plaintiffs' complaint and applications address school related data only, and the state's motion to dismiss applies to the entire action, the parties agreed that no immediate action was necessary on the merits of the application for temporary injunction, giving the court time to consider the defendant's motion to dismiss and plaintiffs' objection thereto.

DISCUSSION

The defendant's motion to dismiss claims that the court lacks jurisdiction for three reasons: (1) the plaintiffs failed to exhaust their administrative remedies; (2) the action is barred by sovereign immunity; and (3) the plaintiffs lack standing. Because the court agrees with the defendant on its first ground for dismissal, the court does not need to, and does not, address the other jurisdictional claims asserted.

In particular, the defendant asserts that the plaintiffs failed to exhaust their administrative remedies by first seeking a declaratory ruling from the defendant, pursuant to General Statutes § 4-176 (a), prior to filing this action, and the Informed Choice Letter is insufficient to meet the legal requirements for a request for a declaration. The plaintiffs disagree and argue that they should be considered parties to the Informed Choice Letter and

the commissioner's response, and that these letters constitute a sufficient request for declaratory relief on their behalf. Alternatively, the plaintiffs claim that in view of the commissioner's response to the Informed Choice Letter, in which she refused to change her position, the plaintiffs' resort to the agency would be futile. The court does not have to, and does not, decide whether the Informed Choice Letter was legally sufficient to constitute a proper request for declaratory relief, because it finds that the plaintiffs were not parties to the request and only a party to an agency action may appeal from an agency decision. Additionally, the court finds that the plaintiffs have failed to establish that seeking a declaratory ruling would be futile.

A

Exhaustion of Administrative Remedy

"It is a settled principle of administrative law that, if an adequate administrative remedy exists, it must be exhausted before the Superior Court will obtain jurisdiction to act in the matter." (Internal quotation marks omitted.) *Housing Authority* v. *Papandrea*, 222 Conn. 414, 420, 610 A.2d 637 (1992). "[A] trial court lacks subject matter jurisdiction over an action that seeks a remedy that could be provided through an administrative proceeding, unless and until that remedy has been sought in the administrative forum. . . . In the absence of exhaustion of that remedy, the action must be dismissed." (Internal quotation marks omitted.) *Republication Party of Connecticut* v. *Merrill*, 307 Conn. 470, 477, 55 A.3d 251 (2012). Moreover, "[o]ur Supreme Court repeatedly has held that when a plaintiff can obtain relief from an administrative agency by requesting a declaratory ruling pursuant to § 4–176, the failure to exhaust that remedy deprives the trial court of subject matter jurisdiction over an action challenging the legality of the agency's action." (Internal quotation marks omitted.) *Board of Education* v. *Bridgeport*, supra, 191 Conn. App. 369.

The plaintiffs claim that because they are members of Informed Choice CT and Brian Festa, an attorney, assisted in drafting the Informed Choice Letter as a member of the group's board, the May 3, 2019 letter and the commissioner's response are sufficient to establish that they exhausted their administrative remedies. The defendant disagrees, and argues that the plaintiffs cannot rely on a third party's submission to the defendant as their own, particularly when they were not identified as a party to that correspondence.[6] The court agrees with the defendant.

The statutory framework under the Uniform Administrative Procedure Act (UAPA) for seeking a declaration from an agency, under § 4-176, and appealing from an agency decision, under § 4-183, make it clear that only persons who were parties to the underlying proceedings may appeal the agency's decision to the Superior Court. Section 4-176 (a) provides in relevant part that: "Any person may petition an agency . . . for a declaratory ruling as to the validity of any regulation, or the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency." "Each agency shall adopt regulations in accordance with the provisions of this chapter, that provide for (1) the form and content of petitions for declaratory rulings, (2) the filing procedure for such petitions and (3) the procedural rights of persons with respect to the petitions." General Statutes § 4-176 (b). The defendant has complied with this statutory requirement and adopted the following regulation:

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[6] Generally, the first issue for the court to decide when a claim of failure to exhaust administrative remedies is raised, is whether the plaintiffs had an available administrative remedy. See *Republican Party of Connecticut* v. *Merrill*, supra, 307 Conn. 485. However, here, because the plaintiffs do not claim that there was no administrative remedy available to them, it is unnecessary for the court to address this issue. The court notes that the defendant's regulations do include provisions for declaratory relief, which provisions are discussed in this opinion.

Requests for Declaratory Rulings

> Any interested person may submit a request to the agency for a declaratory ruling regarding the validity of any regulation, or applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency. The submittal shall conform to the requirements of section 19a-9-6(a), and a copy shall be sent to any persons that the requester knows or has reason to believe may be substantially affected by the declaratory ruling. It shall contain a detailed statement of the person's interest in such matter and the facts relevant thereto, and the names and addresses of persons to whom it was sent. The agency may request the submission of such additional facts as it deems necessary, and may conduct a hearing.

Regs., Conn. State Agencies § 19a-9-12.

Within sixty days after receipt of the petition, the agency is required to take some action on the petition, including issuing a ruling, setting the matter down for "specified proceedings," or deciding not to issue a declaratory ruling. General Statutes § 4-176 (e). Persons may seek to intervene in the proceedings, and the agency may grant persons permission to intervene as parties if it determines that the person's "legal rights, duties or privileges shall be specifically affected by the agency proceeding." General Statutes § 4-176 (d). Copies of "all rulings issued and any actions taken" must be delivered to the petitioner and other parties, and any "declaratory ruling shall contain the name of all parties to the proceeding, the particular facts on which it is based and the reasons for its conclusion." General Statutes § 176 (f) and (h).[7] "An aggrieved party can appeal from a declaratory ruling to the Superior Court pursuant to General Statutes § 4-183." *Republication Party of Connecticut* v. *Merrill*, supra, 307 Conn. 477.

[7] "Party" is defined as "each person (A) whose legal rights, duties or privileges are required by statute to be determined by an agency proceeding and who is named or admitted as a party, (B) who is required by law to be a party in an agency proceeding, or (c) who is granted status as a party under subsection (a) of section 4-177a." General Statutes §4-166 (10).

"Compliance with § 4-176 is not a discretionary option for a party such as the plaintiff, but rather is a 'precondition' to the commencement of a declaratory action in the Superior Court." *Metropolitan District* v. *Commissioner on Human Rights & Opportunities*, 180 Conn. App. 478, 489, 184 A.3d 287, cert. denied, 328 Conn. 937, 184 A.3d 267 (2018). "Appeals to the courts from the decisions of administrative officers or boards exist only under statutory authority. . . . Without statutory authorization, therefore, a court lacks jurisdiction to entertain such an appeal." (Citation omitted.) *Rybinski* v. *State Employees' Retirement Commission*, 173 Conn. 462, 472, 378 A.2d 547 (1977). "A statutory right to appeal may be taken advantage of only by strict compliance with the statutory provisions by which it is created." *Royce* v. *Freedom of Information Commission*, 177 Conn. 584, 587, 418 A.2d 939 (1979).

The plaintiffs have not strictly complied with § 4-176. Admittedly, they did not submit a petition for a declaratory ruling, to the defendant, on their own behalf. Moreover, although § 4-176 (d) permits interested persons to seek to intervene in an administrative proceeding, the plaintiffs did not seek to intervene in connection with the Informed Choice Letter.

The Informed Choice Letter, which raised general legal issues with respect to the release of the school specific immunization data, was not submitted by, or on behalf of, the plaintiffs or any other specific member of the group, but rather on Informed Choice CT's own behalf. The plaintiffs were not signatories to the letter nor recipients of the commissioner's reply. The plaintiffs were not even mentioned or identified in the letter, and their particularized, personal circumstances related to the confidentiality of the information, including their school size, Andrew's physical and mental issues, and the reason they exercised an exception, were not included in the letter.

That Brian Festa was a member of Informed Choice CT's board of directors and both Brian and Krista were members of the organization, does not automatically make them a "party" to the administrative proceedings or an "aggrieved party" under §§ 4-176 and 4-183, particularly where the letters do not even mention the plaintiffs or their individual and specific personal circumstances. Moreover, as a director, Brian Festa was required to act in the best interests of the corporation, not his personal interests. See General Statutes § 33-1104 (a).

The plaintiffs' reliance on *Republication Party of Connecticut* v. *Merrill*, supra, 307 Conn. 477 is misplaced. The primary exhaustion issue in *Merrill* was whether a letter sent to the Secretary of the State, by the Chairman of the Republican Party and republican leaders of the general assembly in their capacities as candidates and party leaders, regarding which party should be listed first on the 2010 election ballots, was sufficient to constitute a request for declaratory relief. See id., 475-76. The Supreme Court found that the letter constituted a legally sufficient request because it sought a decision on the "applicability to specified circumstances of a provision of the [G]eneral [S]tatutes, as required by § 4-176 (a) . . . [and] it met all of the substantive requirements of the defendant's regulations governing declaratory rulings because it was in writing, it clearly stated the substance and nature of the request, it identified the statute under which the inquiry was made, and it provided supporting data, facts and arguments." Id., 483-84.

The Court in *Merrill* did not address the precise issue presented here–whether persons who were not parties to a letter request for declaratory relief may bring a court action on a letter request made by a third party, who is not a party to the court action. In *Merrill*, the court did not have to reach this issue because the plaintiff, the Republican Party, was a party to both the letter requesting declaratory relief and the subsequent court action.

This court could find only one appellate court case on point, which held that a nonparty to an administrative proceeding may not bootstrap its claims to an administrative proceeding brought by another entity, in a later action to the Superior Court. See *Liberty Mobile Home Sales, Inc.* v. *Cassidy*, 6 Conn. App. 723, 726, 507 A.2d 499 (1986) ("Although Liberty was neither a petitioner for the declaratory rulings nor a party to the administrative proceedings, it argues . . . that the motion for reconsideration it filed . . . was, in effect, the functional equivalent of the petition for a declaratory ruling that is mandated by General Statutes § 4-176 as a condition precedent to bringing an action for a declaratory judgment. We find no merit to this contention. . . . The language in General Statutes § 4-176 cannot be construed to allow the substitution of a motion by a nonparty for consideration of a declaratory ruling issued at the request of others for the statutory requirement of a petition for declaratory ruling by such nonparty under § 4-176."); See also *Eamiello* v. *Liberty Mobilehome Sales, Inc.*, Superior Court, judicial district of Waterbury, Docket No. CVWA-8503-1777 (August 31, 1987, *Barnett, J.*) ("Declaratory judgment suits were brought by the defendant to have the Naugatuck rulings reviewed. But, as a nonpetitioner for the underlying rulings, the defendant lacked the standing required by Gen. Stat §§ 4-175 for judicial review.").

By failing to bring their own request for declaratory relief, the plaintiffs effectively denied the defendant the opportunity to review the plaintiffs' specific and personal circumstances and consider them as applied to the confidentiality regulation. Consequently, this court has been denied the ability to review the agency ruling on a full record. See *Board of Education* v. *Bridgeport*, supra, 191 Conn. App. 368 ("A primary purpose of the [exhaustion] doctrine is to foster an orderly process of administrative adjudication and judicial review, offering a reviewing court the benefit of the agency's findings and conclusions. It

relieves courts of the burden of prematurely deciding questions that, entrusted to an agency, may receive a satisfactory administrative disposition and avoid the need for judicial review. . . . Moreover, the exhaustion doctrine recognizes the notion, grounded in deference to [the legislature's] delegation of authority to coordinate branches of [g]overnment, that agencies, not the courts, ought to have primary responsibility for the programs that [the legislature] has charged them to administer." [Internal quotation marks omitted.]).

B

Futility Exception

Although futility is an exception to the exhaustion doctrine, like other exceptions it is applied infrequently and only for narrowly defined purposes. See *Board of Education* v. *Bridgeport*, supra, 191 Conn. App. 369; *Polymer Resources, Ltd.* v. *Keeney,* 227 Conn. 545, 561, 630 A.2d 1304 (1993). "It is futile to seek a remedy only when such action could not result in a favorable decision and invariably would result in further judicial proceedings." *O & G Industries, Inc.* v. *Planning & Zoning Commission,* 232 Conn. 419, 429, 655 A.2d 1121 (1995). In light of the policy behind the exhaustion doctrine, exceptions are narrowly construed. See, e.g., *Simko* v. *Ervin,* 234 Conn. 498, 507, 661 A.2d 1018 (1995) (plaintiffs' mere suspicion of bias on part of defendant, without more, not sufficient to excuse them, on ground of futility, from exhaustion requirement); *O & G Industries, Inc.* v. *Planning & Zoning Commission*, supra, 232 Conn. 429 (actual bias, rather than mere potential bias, of administrative body renders resort to administrative remedies futile); *Polymer Resources, Ltd.* v. *Keeney,* supra, 227 Conn. 562 (mere conclusory assertion that agency will not reconsider decision does not excuse compliance, on basis of futility, with exhaustion requirement); *Housing Authority* v. *Papandrea*, supra, 222 Conn. 432 (action by agency head on similar

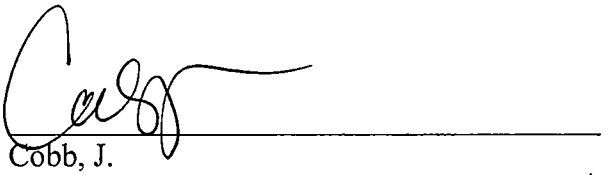
issue to a different party does not make the requirement of exhaustion futile); *Concerned Citizens of Sterling* v. *Sterling,* 204 Conn. 551, 559–60, 529 A.2d 666 (1987) (futility is more than mere allegation that administrative agency might not grant relief requested).

Housing Authority v. *Papandrea,* supra, 222 Conn. 420, is particularly instructive here. There, the court found that simply because a commissioner previously indicated how he would decide the plaintiff's claim, when he decided another claim by another party in a different proceeding, did not excuse the plaintiff from compliance with exhaustion requirement. Id., 428-30. There, the Supreme Court stated that the fact that the commissioner rendered a prior decision "did not relieve the plaintiff of its obligation to pursue its administrative remedies in an effort to persuade the commissioner that his position was legally incorrect." Id., 432. "As one court aptly observed, '[n]o doubt denial is the likeliest outcome [in the administrative proceeding], but that is not sufficient reason for waiving the requirement of exhaustion. Lightning may strike; and even if it doesn't, in denying relief the [agency] may give a statement of its reasons that is helpful to the [court] in considering the merits of the claim.'" *Metropolitan District* v. *Commissioner on Human Rights & Opportunities*, supra, 180 Conn. App. 502, quoting *Greene* v. *Meese*, 875 F.2d 639, 641 (7th Cir. 1989).

Thus, the court finds that the plaintiffs have failed to establish that pursing a declaratory ruling on its own behalf would be futile.

CONCLUSION

Because the plaintiffs failed to exhaust their administrative remedies, this court lacks jurisdiction and, therefore, the action is dismissed.



Cobb, J.

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Docket Number: HHDCV19-5099848S

Case Name: FESTA v. STATE OF CT

Memorandum of Decision dated: 9/27/19

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HHD-CV19-5059848-S FESTA, KRISTEN, A Et Al v. STATE OF CONNECTICUT

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Case Information

Case Type: M00 - Misc - Injunction
Court Location: HARTFORD JD
List Type: No List Type
Trial List Claim:
Last Action Date: 09/16/2019 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party		No Fee Party	Category
P-01	**KRISTEN A FESTA**		Plaintiff
	Self-Rep: PO BOX 952 WOODSTOCK, CT 06281 — File Date: 05/31/2019		
	Attorney: CARA CHRISTINE PAVALOCK (420948) 17 RIVERSIDE AVENUE BRISTOL, CT 06010 — File Date: 07/08/2019		
P-02	**BRIAN D FESTA, PPA ANDREW FESTA**		Plaintiff
	Self-Rep: PO BOX 952 WOODSTOCK, CT 06281 — File Date: 05/31/2019		
	Attorney: CARA CHRISTINE PAVALOCK (420948) 17 RIVERSIDE AVENUE BRISTOL, CT 06010 — File Date: 07/08/2019		
D-01	**STATE OF CONNECTICUT DEPARTMENT OF PUBLIC HEALTH**		Defendant
	Attorney: DARREN P CUNNINGHAM (421685) AG-HEALTH AND EDUCATION 55 ELM ST 5TH FLOOR HARTFORD, CT 06106 — File Date: 06/05/2019		
	Attorney: AAG HENRY A SALTON (085128) ATTY GEN-HEALTH PO BOX 120 HARTFORD, CT 061410120 — File Date: 09/09/2019		

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